

Currently pending claims 1-18 relate to polynucleotides encoding human chitinase enzyme, vectors and host cells comprising such polynucleotides, and methods for using such host cells to produce human chitinase, and are based on Applicant's isolation of DNA encoding human chitinase. Two exemplary embodiments are the DNA inserts contained in plasmids MO-218 and MO-13B (SEQ ID NOS:1 and 3).

The sole remaining rejection in the March 13, 1998 Action was that the claims are allegedly unpatentable under 35 U.S.C. §102(a) (for claims 1-6 and 13-18) or §103(a) (for claims 7-12) over Boot *et al.*, *J. Biol. Chem.*, 270:26252-26256 (1995) (hereafter "Boot"). Although Applicants had previously submitted a Declaration of Patrick Gray Under 37 C.F.R. §1.131 to remove the Boot reference as prior art, the Examiner objected to this declaration on grounds that "the evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA country prior to the effective date of the Boot *et al.* reference." The Examiner stated in particular that she was unable to identify a reference to plasmid MO-218 on the notebook page attached as Exhibit 1 to the declaration because it was a poor photocopy of the original. In addition, during a telephonic interview with the undersigned on August 11, 1998, the Examiner expressed specific concerns that the evidence submitted should show not only possession of plasmid MO-218 but recognition that MO-218 encoded a chitinase. After the undersigned explained the contents of the notebook page and offered to file further supporting documentation, the Examiner expressed general satisfaction with the evidence but required a further declaration clarifying the evidence.

In response, Applicant submits herewith a Second Declaration of Patrick W. Gray Under 37 C.F.R. §1.131 (Exhibit A hereto) that further explains Exhibit 1 to Dr. Gray's previous declaration (now Exhibit 2 to Dr. Gray's Second Declaration) and that includes supporting documentation showing sequence data and sequence comparison results. Applicant respectfully submits that this Second Declaration shows that Applicant isolated the human chitinase gene and completed the invention before the November, 1995 publication date of the Boot article. The rejections under 35 U.S.C. §§102 and 103 thus may properly be withdrawn because Boot is removed as a reference against the claims of this application.

Conclusion

In light of the foregoing amendments and remarks, it is believed that claims 1-18 are now in condition for allowance, and early notice thereof is solicited.

Respectfully submitted,

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